THE FIRST YEAR OF ROMAN LAW. By Fernand Bernard. Translated by Charles P. Sherman. Oxford University Press. American Branch: New York. 1906. pp. xiii, 326.

It is difficult to see why M. Bernard's "First Year" should have been selected for translation. There are in the French, Italian, Spanish, and German languages many first books or "institutes" of Roman law which are as good as his, and some which are better, in that they are not mere compilations but works of original value. M. Bernard, indeed, asserts in his preface that his book is not a *memento* or cram-book, but it has a strong family resemblance to this species of literature. It bristles with details which only an examiner of the most pedantic type would expect a student to master in his first year. It gives no idea of the evolution of the Roman law; it is almost as unhistorical as a pre-Cujacian manual. It does not vivify the institutions and rules of which it treats, or indicate their connection with social life. To illustrate: the author devotes one-twelfth of his book to describing the gradations of status between slavery and full Roman citizenship, and one-third of a page to the *ius honorarium*. That the former topic was of practical importance in the time of Gaius is no reason why the modern student of jurisprudence should be troubled with its arbitrary antiquarian details. To the modern student, however, it is surely of importance to know that the edicts of the Roman magistrates in the provinces and at Rome were the instruments by which the different laws of the Mediterranean basin were first fused into a harmonious system and then incorporated into the Roman law, — the instruments, in a word, by which Roman law was transformed from archaic local custom into a highly developed world-law. Further evidence of the author's lack of historical sense, and illustrations of his incapacity to realize legal institutions, are afforded by his assertions that at Rome agricultural property (*res mancipi*) was older than pastoral property (*res nec mancipi*), and that mortgage without possession (*fiducia*), established by ceremonial sale, was older than pledge with possession (*pignus*). Nor is he able to perceive — at least he does not indicate — the connection between the rule that gifts between husband and wife were invalid and the rules regarding matrimonial property relations and divorce. Given, as at Rome, separate property rights of husband and wife and power on the part of either to terminate the marriage relation at pleasure, it would have been possible, but for the invalidity of gifts from one to the other, for an unscrupulous wife or husband not only to get the other's goods but to get away with them. But the chief defect of the book for English and American students, is to be found in the fact that the most valuable part of the Roman law, that dealing with obligations, is dismissed in eight pages — because in French law-schools obligations are studied in the second year.

M. Bernard cites (in addition to the sources) only French works and such German works as are written in Latin or have been translated into French. Mr. Sherman has added numerous references to English works, but his authorities are of very unequal value and he has unaccountably ignored some of the best. He cites, for example, Roby, Colquhoun, Poste, Morey, and Marion Crawford, but, so far as the reviewer has been able to discover, he does not cite Moyle or Clark or Greenidge. As a translator, Mr. Sherman lacks the first essential power: he does not find the English equivalent for the foreign phrase. To realize, for example, that "the recruiting of the tribunes" (p. 19) means making up the jury panels, and that the decree of the Senate "on the *intercessio* for the women" (p. 24) was a law invalidating female suretyship, the English reader must start with a knowledge of French or of Latin or of both, and must mentally reconstruct M. Bernard's phrases. In many other cases Mr. Sherman clings so closely to the French word or idiom that his translation, even where it is intelligible, is not English. Not having the French text at hand, the reviewer hesitates to hold the translator liable for repeatedly writing "minor" when *impubes* is meant (pp. 109 *et seq.*), or for stating that puberty was not attained until the completed sixteenth year (p. 127), or for substituting twenty for thirty years in the *lex Aelia Sentia* (p. 48, n. 1). It seems improbable, however, that a French law professor should make such mistakes.

There are nine pages of index; but in testing it on one particular subject the reviewer has sought in vain for the titles age, nonage, majority, minority, *pubes*, *impubes*, *pupillus*. M. S.

THE LAW OF HOMICIDE. By Francis Wharton. Third Edition by Frank H. Bowlby. Rochester: Lawyers Co-operative Publishing Company. 1907. pp. clvi, 1120. 8vo.

Those who are familiar with the two older editions of Wharton will find considerable difficulty in recognizing the work in its present form. The first and second editions were of 537 and 794 pages and cited respectively about 750 and 1700 cases; the present edition has nearly as many pages and half again as many cases as the two older editions together. The index has been entirely rewritten and greatly enlarged. In general the arrangement of chapters of the second edition has been followed. In many cases, however, what was treated in a sentence in the older work has now, by the growth of new distinctions and increased decisions, grown into a topic necessitating several sections or even a chapter for its adequate consideration. Like the earlier editions, the present covers not only the substantive law of homicide, but the law of criminal procedure as well, so far as it relates to trials for homicide. There is also a lengthy chapter on evidence in homicide cases.

The present edition has nothing to indicate what parts of it are the work of the author and what of the editor. So far as can be judged from a comparison with the second edition it would seem that the text of Wharton had been used where possible as a starting-point for further distinctions and illustrative cases, and elsewhere simply incorporated in the present text. In some few chapters, as for example that on Elementary Principles as to Malice, the language of the second edition stands practically unchanged.

The treatise as it now stands has, so to speak, been "standardized." It is a logically arranged, detailed, and for the most part clear statement of the various doctrines of the law of homicide. These statements of the law have been illustrated and supported by an almost exhaustively complete collection of decisions. The annotation on the statutory degrees of murder (pp. 153 *et seq.*); the citations on the varying rules as to the necessity for retreat in cases of self-defense (pp. 476 *et seq.*) are good illustrations of the diligence with which the work has been done. For the practitioner who wants to know what the decisions are on a given point the book will prove of great value. Further than this, however, one cannot fairly go. There is little of the personality of the editor felt in the work. One feels throughout a distinct lack of the consideration of conflicting views from the standpoint of general principles, the suggestion of possible distinctions between apparently opposed cases, and the discussion of points not yet settled by decision, — elements that go to make a law treatise of the first rank.

H. A. B.

HISTORY OF ROMAN PRIVATE LAW. By E. C. Clark. Part I. Sources. Cambridge: At the University Press. 1906. pp. 168. 12mo.

Professor Clark's purpose is to write a "new History of Roman Law," and while a firm believer in Ihering's method of treating the facts relating to the subject (to make "a generalization of the Spirit of Roman law — *as a whole*" on the "relation of cause and effect") he has his own special point of view: "to trace the development of that part of Roman law which has more particularly survived to modern thoughts and times," because Roman law is "an example and a lesson of experience for practical politics and actual life." This Part I., "Sources," is a critical consideration of the "sources of our knowledge" of Roman law from earliest Roman history to the last of the cited jurists or the commencement of the era of imperial codification of Roman law, — a period of nearly eleven centuries (from the traditional founding of Rome, 754 B. C., to the Codex Hermogenianus, 314–339 A. D.). Professor Clark divides